

INITIAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Sections 3000, 3521.1, 3521.2, 3545, and 3800.2, repeal Sections 3620 and 3625, and adopt new Sections 3620, 3621, 3622, 3623, 3624, 3625, and 3626 of the California Code of Regulations (CCR), Title 15, Division 3, concerning the Division of Adult Parole Operations' (DAPO) Urinalysis (UA) Testing Program.

DAPO is obligated pursuant to Penal Code Section 3000 to supervise all offenders subject to parole. All parolees who have a history of alcohol or substance abuse are subject to urinalysis (UA) testing for prohibited substances. DAPO utilizes UA testing, to ascertain and detect the presence of prohibited substances used by parolees. The purpose of UA testing, as well as the implementation of interventions and sanctions, is to provide those under supervision the opportunities for long-term recovery from addiction, to increase public safety, and to assist parolees in their reintegration into society by reducing drug use and holding individuals accountable for their actions.

The DAPO UA Testing Program implements the use of instant test kits and seeks to increase the use of the Voluntary Statement of Admission form. The utilization of onsite testing coupled with increased acknowledgment of substance abuse via the Statement of Admission will significantly reduce the number of samples being submitted to the contract laboratory, wherein the only sample warranting a laboratory confirmation is the instant positive result that is disputed by the parolee. The circumstances where the sample is not forwarded to the contract laboratory are as follows: 1) Instant test kit providing a positive result coupled with a signed Voluntary Statement of Admission form, 2) Instant test kit providing a negative test sample.

The instant test kit provides accurate fast results and can be administered anywhere in the community. With an instant test kit, the rapid results reduce laboratory processing costs because all admitted positive and negative samples do not proceed for laboratory testing. The Voluntary Statement of Admission eliminates the need for laboratory confirmations, and/or possibly having to conduct a UA test at all if the parolee admits to use of a prohibited substance. This results in savings as the laboratory testing process is the most expensive component of the drug testing program. When laboratory testing is required, a specimen is collected, sealed, bagged, and shipped utilizing a chain of custody log. In addition, this process further requires a response from the supervising Parole Agent (PA) upon receiving laboratory results. Any savings from contract lab testing will be offset however, by the cost of purchasing the instant test kits for field testing.

The instant test kit yields a far higher percentage of the use of the Voluntary Statement of Admission. This was determined upon review of UA testing records at the original pilot program sites. This enables the PA to intervene immediately utilizing evidence based best practices for recidivism reduction. When the parolee has knowledge he or she will be held immediately accountable for a specimen testing positive for the use of prohibited substance(s), a measure of deterrence occurs. Instant testing on a random basis clearly establishes that there are no "safe" times to use drugs, nor does it afford the opportunity for any attempts to circumvent drug use detection. With delayed results, an offender (parolee) has the ability to continue his or her drug abuse and/or associated criminal activities until he or she is held accountable. Immediate results afford the ability to immediately intervene in criminal behavior, offering a higher degree of community protection.

With instant testing, the PA knows definitively that the parolee is clean and sober, and can offer rewards to support that sobriety. The role of drug testing can be used as a positive treatment modality. When the results are delayed, the PA's assessment of parolee drug abuse may be uncertain, until verified through

laboratory testing, causing delayed rewards for positive behavior. In order to be effective, a process must keep offenders “guessing.” When drug test panels (substances being tested) are certain and predictable, offenders are known to find drugs they can use which are “safe” from detection. Instant tests enable the ability to change drug panels; thus, customizing panels to target drug trends seen in particular geographic areas. Also, it assists in more accurate program placement based on parolee needs.

The DAPO UA Testing Program includes the introduction of a new system that provides a tracking log to be utilized by DAPO staff to substantially improve the tracking of urine samples. The new system also includes the placement of a locking storage container in each parole office or complex, allowing the securing of the samples until the vendor courier service pickup and delivery to the contract laboratory is accomplished. The system is designed to improve upon the security of urine samples so that the sample is treated as evidence, offering a higher level of security, where the chain of custody is maintained by Departmental staff.

Consideration of Alternatives:

The Department must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. Currently, no reasonable alternatives have been brought to the attention of the Department that would alter the Department’s initial determination.

ECONOMIC IMPACT ASSESSMENT:

The Department believes there will not be a significant economic impact with these proposed regulations. The laboratories which do the urinalysis testing also sell the instant test kits, so while there may be reduced laboratory testing needed, there will be increased sales of the instant test kits. The Department predicts that any costs to the State (instant test kits) will be offset by the savings (less lab processing, less parole agent labor costs); therefore no fiscal impact is expected. In addition, costs associated with UA testing are trending downward due to the ongoing decrease in the overall parolee population, which is due in part to Assembly Bill 109, “Realignment,” which redirected specified lower level offenders to be supervised by the counties.

In accordance with Government Code Section 11346.3(b), the CDCR has made the following assessments regarding the proposed regulations:

Creation or Elimination of Existing Jobs within the State of California

The Department has determined that the proposed regulations will not have an impact on the creation of new or the elimination of existing jobs within California. While the Department realizes that some fluctuation may occur in the use of labs for processing urine samples and the procuring of instant test kits, the implementation of these regulations will not cause any significant impact on the creation or elimination of existing jobs within the State of California.

Creation of New Businesses or the Elimination of Existing Businesses within the State of California

The Department has determined that the proposed regulations will not have an impact on the creation of new or the elimination of existing businesses within California. While the Department realizes that some

fluctuation may occur in the use of labs for processing urine samples and the procuring of instant test kits, the implementation of these regulations will not cause any significant impact on the creation of new businesses or elimination of existing businesses within the State of California.

Expansion of Businesses currently doing business within the State of California

The Department has determined that the proposed regulations will not have an impact on the expansion of businesses currently doing business within the State of California. While the Department realizes that some fluctuation may occur in the use of labs for processing urine samples and the procuring of instant test kits, the implementation of these regulations will not cause any significant impact on the expansion of businesses currently doing business within the State of California.

Benefits of the Regulations

The proposed regulatory action will benefit DAPO staff by ensuring statewide consistency, and will act as a directive concerning the Urinalysis Testing Program. In addition, with the ability to use immediate intervention for parolees with substance abuse problems, the proposed regulations will promote recidivism reduction. This will benefit parolees and the general welfare of California residents.

The proposed regulation will have no effect on the health of California residents, worker safety, or the State's environment.

Materials Relied Upon:

The Department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

Local Mandates

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

Specific Purpose and Rationale for each Section, per Government Code 11346.2(b)(1):

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 1. Behavior

3000. Definitions.

Section 3000 is amended to add the definition for "Urinalysis Testing Program." This is necessary to clarify the meaning of this reference as used throughout these regulations.

Subchapter 6. Adult Parole

Article 2. Preventing Parolee Crime Program

3521.1. Parolee Service Center Program.

Subsection 3521.1(a) is amended to remove language which is no longer applicable. Reference to “Board of Parole Hearings” is deleted and replaced with “by the parole authority.” This is because as of July 1, 2012 the Board of Parole Hearings’ authority does not extend to all offenders placed on parole supervision, and functions and determinations have been revised, to extend only to persons placed on parole pursuant to PC 3000.01 et al.

Subsections 3521.1(c)(3)-(7) are amended to remove the reference to “Civil addict commitments,” and renumbering of the subsections has occurred as a result. Removal of all references to “Civil Addict/s” is necessary as this term and/or program is no longer used.

3521.2. Residential Multi-Service Center Program.

Subsections 3521.2(d)(3)-(8) are amended to remove the reference to “Civil addict commitments,” and renumbering of the subsections has occurred as a result. Removal of all references to “Civil Addict/s” is necessary as this term and/or program is no longer used.

Article 3. Electronic Monitoring

3545. Persons to Participate in Continuous Electronic Monitoring.

Subsections 3545(c)(3)-(7) are amended to remove the reference to “Civil addict parolees,” and renumbering of the subsections has occurred as a result. Removal of all references to “Civil Addict/s” is necessary as this term and/or program is no longer used.

Existing Article 10, title heading is repealed to delete “Civil Addicts,” and **adopt** the new title heading “Urinalysis Testing Program.” This is necessary as the Civil Addict term and/or program is no longer used, and is now replaced with the Urinalysis Testing Program.

Existing Section 3620 title heading and contents are repealed to remove all references to the Civil Addict program as it is no longer used.

New Section 3620 title heading and contents are adopted to provide for the Urinalysis Testing Program Policy. This new section establishes that all parolees may be subject to UA testing for prohibited substances, pursuant to Section 3504, and that all confirmed positive UA test results must be addressed by intervention and/or sanctions to promote positive lifestyle changes. This is necessary to comply with statute, and to set forth the new Urinalysis Testing Program.

Subsection 3620(a) is adopted to establish that those parolees with a narcotic related conviction within five years of incarceration for their current offense, or who have a history of alcohol or substance abuse, may have a special condition of parole imposed requiring UA testing. In addition, CDCR Form 1515 Addendum (Rev. 04/13), Special Conditions of Parole, is the form that shall document the participation in the Urinalysis Testing Program. Form 1515 Addendum is already established in regulations therefore no copy is being made available to the public. Further, this section establishes that if reasonable belief exists that a prohibited substance was recently used, the CDCR Form 1515 Addendum is not required for the PA to instruct the parolee to provide a UA specimen for testing. This language is necessary to enforce statute, and to provide as a directive to staff and parolees.

Subsections 3620(a)(1)-(2) are adopted to establish: 1) The frequency in which UA testing is administered, and that it shall be determined by the supervision requirements, and/or any imposed special conditions of parole set by the parole Unit Supervisor (US), the court authority, or the Board of Parole

Hearings (BPH); and 2) The UA test is conducted when the PA obtains a random, unscheduled urine sample from the parolee. This language is necessary for parolees' understanding regarding the frequency that UA testing may be required. A random unscheduled urine sample is necessary to ensure valid test results so that the program remains a true successful tool in testing for substance abuse.

Subsection 3620(b) is adopted to establish that prior to collecting the urine sample, the PA shall inquire of the parolee whether the parolee is taking any prescription or over-the-counter medications which may result in a positive UA test result. CDCR Form 1650-D (Rev. 06/12), Record of Supervision, is introduced as the form which shall document the parolee's response to the inquiry, only if the parolee declares that he or she is taking prescription medication. This form is incorporated by reference into these regulations and a copy is made available to the public. If the parolee admits to taking prescription medication, and/or the PA suspects that the type of medication may indicate a positive UA test result for prohibited substances, the PA shall instruct the parolee to provide proof of the current and valid prescription. The CDCR Form 1502, Activity Report, is the form that shall document proof of a current and valid prescription, and a copy shall be placed in the parolee's field file. Form 1502 is already established in regulations therefore no copy is being made available to the public. This language is necessary to ensure that test results are valid and legitimate, and to provide proper documentation for future reference.

Subsections 3620(c), and 3620(c)(1)-(5) are adopted to establish that the UA sample shall be taken under direct observation of the PA whenever possible, where he or she can clearly observe the flow of urine into the approved specimen bottle. The PA shall adhere to the following steps during the collection of the UA sample: 1) Check the restroom for contraband and conduct a visual search of the parolee's person prior to administering the test; 2) Conduct a pat down search when necessary to ensure parolee is not in possession of any contraband, only when safe to do so (i.e., in the parole office, or when in the community in the presence of another law enforcement officer); 3) Prohibit the parolee from taking anything other than the test kit into the restroom, and note the temperature and color of the sample immediately following the test; 4) In the event that direct observation is not possible, further steps may be taken to reduce the chance of manipulation (e.g., no running water or flushing toilet); 5) Documentation and placement of the sample into the locked UA sample storage container pursuant to Section 3623. This language is necessary to ensure the safety and security of the sample collection process, as well as the safety of the PA.

Subsections 3620(d), and 3620(d)(1)-(5) are adopted to establish that UA samples being sent to the laboratory for confirmation must include security labels provided by the contracted laboratory, and must be completed by the PA who collected the UA sample. The PA must clearly indicate the type of UA tests to be completed. The security label shall be placed on the sample bottle, and shall include: 1) The date the sample was obtained; 2) The parolee's CDC number; 3) The parole unit's identification or billing number; and 4) The name or initials of the PA who collected the UA sample. This language is necessary to ensure proper identification and security of the UA sample.

New Section 3621 title heading and contents are adopted to establish the new section "Instant Test Kit," which provides that collection of the UA test sample shall first be obtained by utilizing an onsite testing device, which is an instant test kit; and, that a positive or negative test result shall determine the next course of action. This language is necessary to clarify and set forth the process regarding the instant test kit.

Subsections 3621(a), and 3621(a)(1)-(2) are adopted to specify the procedures for a negative instant test result. On negative test results the PA shall have the parolee discard the sample and the test kit; 1) No further laboratory confirmation is required; 2) The CDCR Form 2249 (06/12), Urinalysis Sample Control Log, is introduced as the form in which the negative test result shall be recorded, and it shall also be

recorded on the CDCR Form 1650-D, Record of Supervision. This language is necessary as a directive to staff regarding processing of negative test results, and to ensure the security and integrity of the Urinalysis Testing Program. Form 2249 is incorporated by reference and a copy is made available to the public.

Subsections 3621(b), and 3621(b)(1)-(3) are adopted to specify the procedures for an undisputed presumptive positive instant test result. The test result is recorded on the CDCR Form 2249, Urinalysis Sample Control Log, and the PA obtains a signed CDCR Form 1527 (06/12), Voluntary Statement of Admission, from the parolee, which is utilized for the purposes of voluntary admission by the parolee of the use of prohibited substances. This form is incorporated by reference and a copy is made available to the public. The following steps are then taken by the PA: 1) The PA shall have the parolee discard the sample and test kit; 2) No further laboratory confirmation is required; 3) The PA shall adjudicate the presumptive positive test utilizing swift and certain interventions which may include immediate community drug treatment. This language is necessary to provide as a directive to parolees and staff, for the procedures regarding an undisputed presumptive positive instant test result.

Subsections 3621(c), and 3621(c)(1)-(4) are adopted to specify the procedures in the event of a disputed positive instant test result. Language specifies that the PA shall record the instant test results on the CDCR Form 2249, and adhere to the following steps to preserve the chain of custody of the UA sample: 1) Process the sample in the contract laboratory approved specimen bottle; 2) Process the identification label and instruct the parolee to place the label on the specimen bottle in the PA's presence; 3) Ensure that the bottle shall be sealed by the parolee and placed into the individual specimen bag; and 4) Secure the sample in accordance with Section 3623(b). This language is necessary to ensure security, and provide as a directive to staff, the steps to be taken in regards to a disputed positive instant test result.

Subsection 3621(d) is adopted to specify that upon laboratory confirmation, the PA shall ensure that the positive test result shall be adjudicated to include immediate interventions. This is necessary in order to complete the UA Testing Program, and ensure successful results.

Subsection 3621(e) is adopted to provide that if the parolee admits to use of a prohibited substance, the PA shall obtain a CDCR Form 1527, signed by the parolee indicating a voluntary admission for the use of a prohibited substance. This language is necessary to clarify the process surrounding a voluntary admission for the use of a prohibited substance, and provides as a directive to parolees and staff, for the procedures regarding a voluntary admission.

New Section 3622 title heading is adopted to establish the new section "Tracking of Urinalysis Sample and Documentation."

Subsection 3622(a) is adopted to provide that in order to maintain the integrity of the chain of custody from point of receipt of the sample; the PA shall log every sample, and take the steps as set forth in the following subsections. This is necessary to ensure the security of the Urinalysis Testing Program.

Subsections 3622(a)(1)-(4) are adopted to establish the steps that the PA needs to take when processing the UA sample. These include: 1) Entering the UA test sample on the CDCR Form 2249, Urinalysis Sample Control Log, with the parolee's name, signature, CDC number, PA's initials, collection date and time, and UA test result; 2) Depositing disputed positive tests that require laboratory confirmation into the locked UA sample storage container, and making an indication on the CDCR Form 2249 that the sample was sent to the contract laboratory; 3) Entering the sample collection event, which describes the circumstances in which the urine sample is collected (i.e., sample collected in the residence, in parole office, or during booking at the local jail facility), the test result, and the outcome on the CDCR Form 1650-D, Record of Supervision; and 4) Submitting the CDCR Form 2249 to the US for processing. This

language is necessary to provide instruction to staff, and enforce the process for tracking and documentation of the UA sample. Tracking/documentation is an important part of the UA testing process to ensure proper identification of samples, prevent tampering, mishandling, etc.

Subsection 3622(b) is adopted to establish that the PA shall deposit collected UA samples into the locked UA sample storage container upon returning to the parole unit, prior to the end of his or her shift, but no later than close of business the next business day. This is necessary to ensure the security of the UA samples, and to provide as a directive to staff.

New Section 3623 title heading is adopted to establish the new section “Locked Urinalysis Sample Storage Container.”

Subsection 3623(a) is adopted to establish that to ensure that the integrity of the UA sample is not compromised in temporary storage, the US or designee must maintain security of the UA sample from the point of collection and storage to the subsequent transfer to the contract courier. This is necessary to ensure security of the UA samples.

Subsection 3623(a)(1) is adopted to establish that each parole unit shall maintain the locked UA sample storage container in a fixed location. This is to be an area where parolees are not allowed unattended access. This is necessary to ensure security of the UA samples.

Subsection 3623(a)(2) is adopted to establish that only the US or designee shall be granted access to the locked UA sample storage container to retrieve the UA samples for transfer to the courier service employee. This is necessary to ensure the security of the UA samples, and the integrity of the UA Testing Program.

Subsection 3623(a)(3) is adopted to establish that the US or designee, shall maintain the storage container key. This is necessary to ensure the security of the UA samples.

Subsection 3623(b) is adopted to establish that the UA sample, in the labeled bottle and individually sealed in the bag, shall be secured in the locked UA sample storage container; and, that this shall serve to maintain the chain of custody of the UA sample. This is necessary to provide as a directive to staff, and to ensure the security of the UA sample, and the UA Testing Program.

Subsection 3623(b)(1) is adopted to establish that the transportation bag shall be maintained inside the locked UA sample storage container until the transportation bag/s (to include the UA samples) are transferred to the courier service employee by the US or designee. This is necessary to ensure the security of the UA sample/s, and to provide as a directive to staff.

New Section 3624 title heading is adopted to establish the new section “Transfer to Vendor Process.”

Subsections 3624(a), and 3624(a)(1)-(5) are adopted to establish the process for transferring of the UA sample/s to the laboratory courier. These sections specify that upon arrival of the laboratory courier, the US or designee shall: 1) Unlock the locked UA sample storage container and remove the plastic transportation bag containing the individually packaged UA samples; 2) Secure the bag and transfer the sealed bag to the vendor courier service employee; 3) Print his or her name and sign the CDCR Form 2250; and 4) Place a new plastic transportation bag in the locked UA sample storage container and lock the container. This language is necessary to provide as a directive to staff, and to ensure security of the UA sample/s. Form 2250 is incorporated by reference into these regulations and a copy is made available to the public.

New Section 3625 title heading is adopted to establish the new section “Documentation of Laboratory Test Results.”

Subsection 3625(a) is adopted to establish that the laboratory responsible for analyzing the UA samples shall provide each parole unit with the test results for all submitted UA samples. Typically, the test results are sent to the parole unit via facsimile. Laboratory test results shall be logged, maintained, and processed by designated parole unit support staff. A legible copy of each individual test result shall be kept in the parolee’s Field File for use at a later date, if needed. This language is necessary to provide as a directive to staff, and/or the contract laboratory, for the procedures to be followed.

Subsections 3625(a)(1)-(3) are adopted to establish the other necessary steps that the parole unit support staff shall take regarding processing of laboratory test results, which are as follows: 1) Maintain one copy of all test results for the parole unit in a central location, accessible to all staff; 2) Provide the US with one copy of the test results; 3) Verify the Parole Agent of Record (AOR) assignment for each parolee with a positive UA test result, and provide that AOR with a copy of the test results of the affected parolee. This language is necessary to provide as a directive to staff for the procedures to be followed; and to ensure that the test results are accessible to parole staff, the Unit Supervisor has a copy of the results, and that the correct Parole Agent of Record is given the test results.

New Section 3626 title heading and contents are adopted to establish the new section “Adjudication of a Parole Violation as a Result of Positive Test.” This section provides that in the event of a positive test result, the PA shall case conference the violation with the US or PAII (Supervisor) to determine the appropriate interventions and/or sanctions based on the case factors and available resources. The PA shall document the results on the CDCD Form 1650-D, Record of Supervision, and complete a CDCR Form 1500, Parole Violation Decision Making Instrument, identifying appropriate resources and/or interventions based on identified criminogenic needs. Form 1500 is already established in regulations therefore no copy is being made available to the public. The US or PAII (Supervisor) must verify that all positive test results have been adjudicated pursuant to Section 3768. This is necessary to complete the Urinalysis Testing Program process, and is the key component for providing the parolee with resources for recovery from addiction to increase their chances of success in society, providing safety of the public, and also achieving the goal of reducing recidivism.

Article 21. PC 3050 Residential Aftercare Program

3800.2. Treatment Incentive Program Exclusionary Criteria.

Subsections 3800.2(a)(3)-(5) are amended to remove the reference to “Civil addict commitments,” and renumbering of the subsections has occurred as a result. Removal of all references to “Civil Addict/s” is necessary as this term and/or program is no longer used.